

Part III - Administrative, Procedural, and Miscellaneous

Section 45D – New Markets Tax Credit

Notice 2003-68

PURPOSE

The purpose of this notice is to announce that the Treasury Department and the Internal Revenue Service will clarify and amend the definition of a qualified low-income community investment under § 1.45D-1T(d)(1)(ii) of the temporary Income Tax Regulations.

BACKGROUND

Section 45D(a)(1) of the Internal Revenue Code provides a new markets tax credit on certain credit allowance dates described in § 45D(a)(3) with respect to a qualified equity investment in a qualified community development entity (CDE) described in § 45D(c).

Section 45D(b)(1) provides that an equity investment in a CDE is a “qualified equity investment” if, among other requirements: (A) the investment is acquired by the taxpayer at its original issue (directly or through an underwriter) solely in exchange for cash; (B) substantially all of the cash is used by the CDE to make qualified low-income community investments; and (C) the investment is designated for purposes of § 45D by the CDE.

Section 45D(b)(2) provides that the maximum amount of equity investments issued by a CDE that may be designated by the CDE as qualified equity investments shall not exceed the portion of the new markets tax credit limitation set forth in § 45D(f)(1) that is allocated to the CDE by the Secretary under § 45D(f)(2).

Section 45D(c)(1) provides that an entity is a CDE only if, among other requirements, the entity is certified by the Secretary of the Treasury Department as a CDE.

Section 45D(d)(1) provides that the term “qualified low-income community investment” means: (A) any capital or equity investment in, or loan to, any qualified active low-income community business (as defined in § 45D(d)(2)); (B) the purchase from another CDE of any loan made by such entity that is a qualified low-income community investment; (C) financial counseling and other services to businesses located in, and residents of, low-income communities; and (D) any equity investment in, or loan to, any CDE.

Section 1.45D-1T(d)(1)(ii) provides that the term qualified low-income community investment includes the purchase from another CDE (whether or not that CDE has received an allocation from the Secretary under § 45D(f)(2)) of any loan made by such entity that is a qualified low-income community investment. Section 1.45D-1T(d)(1)(ii) further provides that a loan purchased from another CDE is a qualified low-income community investment if it qualifies as a qualified low-income community investment either: (A) at the time the selling CDE made the loan; or (B) at the time the loan is purchased from the selling CDE.

DISCUSSION

Comments have been received requesting clarification of whether, under § 1.45D-1T(d)(1)(ii), the purchase of a loan may be a qualified low-income community investment if the loan was made by an entity before the entity became a CDE. In response to these comments, § 1.45D-1T(d)(1)(ii) will be amended to provide that, for purposes of § 45D(d)(1)(B), a loan by an entity is treated as made by a CDE,

notwithstanding that the entity was not a CDE at the time it made the loan, if the entity is a CDE at the time it sells the loan.

Comments have also been received requesting guidance on whether the purchase of a loan by a CDE (the ultimate CDE) from a second CDE may be a qualified low-income community investment under § 45D(d)(1)(B) if the loan was made by a third CDE (the originating CDE). In response to these comments, § 1.45D-1T(d)(1)(ii) will be amended to provide that, for purposes of § 45D(d)(1)(B):

1. The purchase of a loan by the ultimate CDE from a second CDE that purchased the loan from the originating CDE (or from another CDE) is treated as a purchase of the loan by the ultimate CDE from the originating CDE, provided that each entity that sold the loan was a CDE at the time it sold the loan; and

2. A loan purchased by the ultimate CDE from another CDE is a qualified low-income community investment if it qualifies as a qualified low-income community investment either (A) at the time the loan was made or (B) at the time the ultimate CDE purchases the loan.

The temporary regulations will be revised to incorporate the guidance set forth in this notice. Taxpayers may rely on this notice prior to the issuance of the revised temporary regulations.

DRAFTING INFORMATION

The principal author of this notice is Paul Handleman of the Office of Associate Chief Counsel (Passthroughs and Special Industries). For further information regarding this notice, contact Mr. Handleman on (202) 622-3040 (not a toll-free call).